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Counsel to Black Diamond Commercial Finance, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:

PATRIOT COAL CORPORATION, *et al.*,

Debtors.

BLACK DIAMOND COMMERCIAL FINANCE, LLC,

Plaintiff,

v.

VIRGINIA CONSERVATION LEGACY FUND, INC.
and ERP COMPLIANT FUELS, LLC,

Defendants.

Chapter 11

Case No. 15-32450 (KLP)

Jointly Administered

Adv. Proc. No. 16-03105 (KLP)

VIRGINIA CONSERVATION LEGACY FUND, INC.
and ERP COMPLIANT FUELS, LLC,

Counterclaim-Plaintiffs,

v.

BLACK DIAMOND COMMERCIAL FINANCE, LLC,

Counterclaim-Defendant.

BLACK DIAMOND’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Black Diamond Commercial Finance, LLC (“Black Diamond”), by their attorneys Covington & Burling LLP and McGuireWoods LLP, respectfully move this Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure, and this Court’s Local Rules 7056-1 and 9013-1, for partial summary judgment against Virginia Conservation Legacy Fund, Inc. and ERP Compliant Fuels, LLC (collectively, “Defendants”). Black Diamond requests that the Court enter judgment that Defendants breached the Commitment Letter, and that Black Diamond did not repudiate the Commitment Letter.¹

In support of its Motion, Black Diamond submits its *Memorandum of Law in Support of Motion for Partial Summary Judgment*, dated December 14, 2017; its *Statement of Undisputed Material Facts*, dated December 14, 2017; and the *Declaration of C. William Phillips*, dated December 14, 2017.

Under Local Bankruptcy Rule 9013-1, unless a written response to its Motion and supporting Memorandum of Law and other papers are filed with the Clerk of Court and served on Black Diamond within 14 days of the service of this notice objecting to the relief

¹ Unless otherwise noted, defined terms used herein have the same meanings as those ascribed to them in Black Diamond’s accompanying Memorandum of Law in Support of Motion for Partial Summary Judgment.

requested, the Court may deem any opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

Black Diamond requests a hearing on the Motion, to be held on a date yet to be determined.

Dated: December 14, 2017
Richmond, Virginia

Respectfully submitted,

By: /s/ John H. Maddock III

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*Counsel to Black Diamond Commercial
Finance, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2017, I caused the foregoing *Motion for Partial for Summary Judgment* to be filed with and uploaded to this Court's CM/ECF system, which will send filing to all CM/ECF participants, and on the following parties by email:

William M. Sullivan, Jr. (wsullivan@pillsburylaw.com)
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Samuel S. Cavior (samuel.cavior@pillsburylaw.com)
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/s/ John H. Maddock III

John H. Maddock III

EXHIBIT A

PROPOSED ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: PATRIOT COAL CORPORATION, <i>et al.</i> , Debtors.	Chapter 11 Case No. 15-32450 (KLP) Jointly Administered Adv. Proc. No. 16-03105 (KLP)
BLACK DIAMOND COMMERCIAL FINANCE, LLC, Plaintiff, v. VIRGINIA CONSERVATION LEGACY FUND, INC. and ERP COMPLIANT FUELS, LLC, Defendants.	
VIRGINIA CONSERVATION LEGACY FUND, INC. and ERP COMPLIANT FUELS, LLC, Counterclaim-Plaintiffs, v. BLACK DIAMOND COMMERCIAL FINANCE, LLC, Counterclaim-Defendant.	

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Upon consideration of the *Motion for Partial Summary Judgment* filed by Plaintiff Black Diamond Commercial Finance, LLC ("Black Diamond") on December 14, 2017 (the "Motion"), and the related briefs and record, it is HEREBY ORDERED THAT:

1. The Motion is granted.

2. The Court finds that Virginia Conservation Legacy Fund, Inc. and ERP Compliant Fuels, LLC (collectively, “Defendants”) breached the Commitment Letter, and that Black Diamond did not repudiate the Commitment Letter.

3. The Court will retain jurisdiction with respect to any dispute concerning the relief granted hereunder or any other unresolved issues pertaining to this matter.

Dated: _____
Richmond, Virginia

THE HONORABLE KEITH L. PHILLIPS
UNITED STATES BANKRUPTCY JUDGE

Dated: December 14, 2017
Richmond, Virginia

WE ASK FOR THIS:

By: /s/ John H. Maddock III

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*Counsel to Black Diamond Commercial
Finance, LLC*

CERTIFICATE OF ENDORSEMENT

Pursuant to this Court's Local Rule 9022-1(C), I hereby certify that the foregoing Proposed Order has been served via CM/ECF on all parties registered to receive service, and on the following parties by email:

William M. Sullivan, Jr. (wsullivan@pillsburylaw.com)
Joshua I. Schlenger (joshua.schlenger@pillsburylaw.com)
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Andrew M. Troop (andrew.troop@pillsburylaw.com)
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/s/ John H. Maddock III
John H. Maddock III